

No. 2450-4Lab-76/10032.— In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workman and the management of M/s. United Oil Mill Machinery and Spares Private Ltd., 24-Mathura Road, Ballabgarh.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 247 of 1971

Between

SHRI UJAGAR SINGH, WORKMAN AND THE MANAGEMENT OF M/S. UNITED OIL MILL MACHINERY AND SPARES PRIVATE LTD., 24-MATHURA ROAD, BALLABGARH.

AWARD

By order No. ID/FD/331-D-71/40099, dated the 11th December, 1971, the Governor of Haryana, referred the following dispute between the management of M/s. United Mill Machinery and Spares Private Ltd., 24-Mathura Road, Ballabgarh and its workman Shri Ujagar Singh to this Labour Court, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Ujagar Singh was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in response to the usual notices of reference sent to them and filed their pleadings.

Whereas the workman employed as an Electrician alleged in his claim statement that the management terminated his services illegally with effect from 24th August, 1971 without holding any enquiry, in order to victimise him and that he was entitled to reinstatement with full back wages, the management pleaded that his services had been retrenched,—*vide* letter, dated 24th August, 1971 for want of work with them and that he was not entitled to retrenchment compensation on account of the period of his services being less than one year at the time of his retrenchment. They further resisted the reference in the pleas that the workman failed to raise a demand directly on them before taking the matter to the Conciliation Officer and that as such there was no industrial dispute between the parties.

The following issues were thus framed on the pleas of the parties, —*vide* order, dated 18th April, 1973.

- (1) Whether the demand the subject matter of the present reference was first raised on the management and rejected by it, if not, with what effect ? (on workman);
- (2) Whether the termination of services of Shri Ujagar Singh was justified and in order ? If not, to what relief is he entitled ?

I have heard the learned authorised representatives for the parties and have carefully seen the record. I decide the issues as under :—

Issue No. 1

I for the reasons stated by me in detail in my order, dated 10th October, 1975 made in reference titled Shri S. C. Sethi *versus* M/s. Kirlosker Oil Engine, Mathura Road, Faridabad, hold that it was no longer necessary for the workman to raise a demand directly on the management and for the later to reject it, before the matter was taken to the Conciliation Officer in order to constitute an industrial dispute. I decide the issue accordingly.

Issue No. 2.

This is an important issue in the case. The workman appeared as his own witness as W. W. 1 and deposed that his services were terminated without service of any charge sheet on him and that the workman junior to him had been retained at the time of termination of his services. He however could not tell the name of any person junior to him allegedly retained by the management while terminating his services. He on the other hand in reply to a Court question admitted that he did not know if any other electrician had been appointed after the date of termination of his services. He admitted having joined service of the management on making the application Exhibit M. 1, dated 7th September, 1970. The services were admittedly terminated with effect from 24th August, 1971. It is thus obvious that the workman had admittedly put in service less than one year on the date of termination of his services.

Shri Kasturi Lal Anand, Technical Director of the management appearing as M. W. I deposed that the workman had become surplus due to want of work and that his services had to be terminated. —*vide* letter Exhibit M/1A; dated 24th August, 1971. In absence of proof on behalf of the workman and an omission in the statement of claim filed by him in respect of retention of person junior to him by the management on the date of termination of his services, his solitary statement made during trial that junior hands were retained by the management at the time of his retrenchment can not be relied upon. I as such fully rely on the evidence of Shri Kasturi Lal which is found to be duly corroborated by letter Exhibit M/1A, duly signed by the workman. I thus hold that the workman had become surplus for want of work with the management and he was retrenched on that ground.

As regard the requirement of compliance by the management of the provision of section 25-F of the Industrial Disputes Act relating to retrenchment the workman had admittedly put in service of a period less than one year at the time of the date of retrenchment of his service. The provision of section 25-F of the aforesaid act applied only to workman putting in one year service or more than one year service and as such this section has no application to the instant case.

Taking from any angle the termination of the services of the workman by the management by way of retrenchment as fully justified and the former is not entitled to any relief. I, therefore, decide this issue in favour of the management. I accordingly answer the reference while returning the award in terms of findings made by me.

Dated the 2nd March, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 645, dated the 3rd March, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana, Rohtak.

The 14th/15th April, 1976

No. 2518-4Lab-76/10028.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/S. T.I.T., Bhiwani.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 37 of 1967

Between

THE WORKMEN AND THE MANAGEMENT OF M/S. T.I.T., BHIWANI

AWARD

By order No. 102-SF-3Lab-67/4694, dated the 7th March, 1967 the Governor of Haryana, referred the following dispute between the management of M/s. T.I.T., Bhiwani and its workmen to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

- (1) Whether the workmen are entitled to the grant of any additional Bonus for the year, 1964-65 ? If so, what should be the quantum of additional Bonus and the condition of its payment ?
- (2) Whether the workmen are entitled to extra wages for 15th August, 1965 ? If so, with what details ?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them, and filed their pleadings.

The workmen represented by T. I. T. Karamchari Sangh Bhiwani filed a claim statement that the bonus declared by the management at the rate of 4 percent of the annual wages during the year 1964-65 was inadequate

and that they were entitled to the grant of 20 per cent of their annual wages as bonus for that year inasmuch as the Mills had made huge profits and were financially sound and were expending and developing their business rapidly. They stated that 15th August, 1965 a national holiday fell Sunday and the management illegally denied the weekly rest during that week and that each one of them was thus entitled to payment of one day double wages.

The workmen represented by Textile Mazdoor Sangh Bhiwani also filed a claim statement in respect of their entitlement of double wages for one day as covered by dispute No. 2 and did not propose to pursue the demand relating to dispute No. 1.

The management, vide written statement filed by them pleaded that the reference made to the Court was incompetent inasmuch as the claim of 20 per cent of the annual wages as bonus was vague and beyond adjudication and the claim for double wages for weekly rest day was in the nature of compensation and not wages. They further raised a preliminary objection that since the demand of the union was in substance for payment of extra wages for days other than 15th August, reference relating to their entitlement for extra wages for 15th August, was not legally maintainable. On merits they denied the allegations of the workmen and gave out that their being a deficit of available surplus, the minimum bonus of 4% of the annual wages as actually declared and paid to the workmen was just proper and legal in all respects. They stated the particulars and the manner leading to their decision of declaring 4 per cent minimum bonus. They denied the right of the workmen of a weekly rest day in case the national holiday fell on Sunday.

The following issues were thus framed on pleas of the parties,—vide order, dated 28th April, 1967 of Shri K. L. Gosain, the then Presiding Officer of the Industrial Tribunal.

1. Whether the reference is incompetent for the reasons given in preliminary objections 1, 2 and 3 in the written statement of the management?
2. Whether the workmen are entitled to the grant of any additional Bonus for the year 1964-65, If so, what should be the quantum of additional Bonus and the condition of its payment?
3. Whether the workmen are entitled to extra wages for 15th August, 1965 ? If so, with what details?

Shri K. L. Gosain,—vide his interim award, dated 2nd February, 1968 decided issue No. 1 against the management and issue No. 3 in favour of the workmen while holding that they were entitled to one days extra wages for 15th August, 1965.

It would appear that I am now called upon to decide issue No. 2 only. I accordingly decide it as under :—

Issue No. 2.—

The workmen examined Shri Narain Prashed, Finance Officer of the management as W. W. 1, for the first time on 30th May, 1972 and continued examining him on different hearing fixed in the case till 28th June, 1973. They thereafter began examining Shri P. L. Jalan, Chief Account Officer of the management from 6th June, 1974 and continued examining him on different hearing fixed in the case till 5th November, 1974. His examination was not yet concluded when Shri Raghbar Dayal, Secretary T. I. T. Karamchari Sangh and their representative Shri Sham Sunder declined to continue his examination and prayed for an adjournment. One adjournment was granted by me,—vide my order dated 19th August, 1975 and the second request made on 27th October, 1975 the next date of hearing fixed in the case for yet another adjournment was considered unjust and unreasonable and the evidence of the workmen was thus closed, vide my detailed order, dated 27th October, 1975 Shri Nathu Mal Jain, Factory Manager of the Mills appeared as M. W. 1 and closed his case. The workmen also examined Shri Radhey Sham Shah employed as Accounts Officer in Birla Education Trust, Pilani.

I have carefully gone through the statements of Sarvshri Narain Parshad W. W. 1, P. L. Jalan W. W. 2, and Radhey Sham W. W. 3. I find nothing material in the statement of any of them justifying a conclusion in respect of entitlement of the workmen of bonus more than the minimum 4% actually declared and paid to them according to the provisions of sections 4, 5 and 6 of payment of bonus Act, 1965, hereinafter referred to as the Act applicable in respect of the year in dispute, vide section 1, sub-section 4 of the Act.

Shri Nathu Mal Jain M. W. 1 tendered in evidence the statement Ex. M-4 relating to the calculation of the Bonus for the year in dispute prepared by him after consulting the relevant record, and the calculation chart Exhibit M-5, in respect of the depreciation of the property during the year in dispute. Shri Narain Prashad W. W. 1 admitted in his cross examination made by the management that the depreciation chart Exhibit W. W. 1/10 was correctly prepared as per income tax rate and that the statement relating to development rebate Ex. M-1 and the statement of direct taxes Ex. M-2 and the statement showing interest on the investment Ex. M-3 had been correctly prepared. There is absolutely no evidence for the workmen on record establishing the incorrectness of the statements Ex. M-1 to M-5 relied on by the management for arriving at the minimum bonus of 4% declared by them and these documents have thus remained unassailed.

Section 5 of the Act provides as under.—

“The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in section 6.”

The relevant provision of section 6 of the Act lays down as under.—

“The following sums shall be deducted from the gross profits as prior charges, namely.—

- (a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the income tax Act, or in accordance with the provisions of the agricultural income tax law as the case may be ;
- (b) any amount by way of development rebate or development allowance which the employer is entitled to deduct from his income under the Income Tax Act ;
- (c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year.

Section 7(b) of the Act reads as under :—

“where the employer is a religious or a charitable institution to which the provisions of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act ;”

I have carefully seen the statement Exhibit M-4 relating to the calculation of bonus for the year in dispute according to the provision of section 5, 6 and 7(b) of the Act reproduced above. prepared by Shri N.M. Jain with reference to the statements, M-1, M-2, M-3 and M-5 referred to above and held by me to be correct. I find that there was a deficit of available allocable surplus to the tune of Rs 1,47,162 and the minimum bonus of 4% of the annual wages as declared by the management is thus correct and justified in all respects. The workmen are thus not entitled to the grant of any additional bonus for the year 1964-65. I decide the issue accordingly.

I, therefore, answer the reference while returning the award in respect of dispute No. 2 accordingly to the finding made by me above.

Dated the 19th February, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 294, dated the 23rd February, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 23rd February, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 15th April, 1976

No. 3473-5Lab-76/9550.—In exercise of the powers conferred by sub-section (1) of section 85 of the Factories Act, 1948(Central Act 63 of 1948), and all other powers enabling him in this behalf, the Governor of Haryana hereby declares that all the provisions of the said Act, shall apply to any place in the State of Haryana, wherein any manufacturing process covered under section 87 of the Act and rule 102 of the Punjab Factory Rules, 1952, is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that—

- (i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or
- (ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with such owner.

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.